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Candace Havens
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WORKING SESSION MEMORANDUM

DATE: September 20, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development 
Dori Zaleznik, Commissioner of Health & Human Services
Marie Lawlor, Assistant City Solicitor
James Freas, Chief Planner, Long-Range Planning

RE: #309-13: DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to establish parameters regarding what districts and under what conditions Medical Marijuana Treatment Centers will be allowed within the City of Newton.

#309-13(2): DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to create a temporary moratorium on the placement of Medical Marijuana Treatment Centers in the City of Newton to allow the City adequate time to complete a planning process to consider in what districts and under what conditions Medical Marijuana Treatment Centers will be allowed.

MEETING DATE: September 23, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

EXECUTIVE SUMMARY

The voters of Massachusetts overwhelmingly passed a law to permit the cultivation and sale of marijuana for medicinal use in November 2012 and since that time the Massachusetts Department of Public Health (DPH) has developed state regulations to permit the siting and operation of registered marijuana dispensaries (RMD) and begun the first phase of the permitting process. Staff recommends

that RMDs be treated as a new use within the zoning ordinance and that amendments be made to the ordinance to allow this use in certain manufacturing and business districts where identified location-related criteria can be met. With the state anticipating the completion of their permitting process by the end of the calendar year, Newton will need to provide direction, via the zoning ordinance, as to the appropriate locations within the City where this use might occur. In the event that suitable locations cannot be agreed upon, a moratorium option is available in order to allow more time for consideration. If no action is taken, the City would have limited capability to regulate the location of a registered marijuana dispensary.

BACKGROUND

With the passage of the Medical Marijuana referendum in the 2012 elections, Massachusetts became one of 18 states to legalize the use of marijuana for medicinal purposes. While the issue of medical marijuana is not without a degree of controversy, the drug has demonstrated effectiveness in a number of serious medical conditions. Marijuana has been shown to be effective for control of pain, particularly the chronic unremitting pain associated with cancer and neuropathy (nerve irritation). The drug is also useful for control of nausea especially in patients receiving chemotherapy for cancer. Marijuana additionally has the benefit of improving appetite in patients with debilitating illnesses such as cancer or AIDS when weight loss can be severe. It has been used with some success in some patients with seizure disorder, Parkinson's, and Lou Gehrig's disease. Compared to some of the medications used for chronic pain, in particular narcotics, marijuana has fewer side effects, less of a need to increase doses due to tolerance, and significantly less addiction potential.

The primary cause of controversy surrounding the issue of medical marijuana is the drug's continued illegal status under the Federal Controlled Substances Act and its potential for recreational use. In recognition of these issues, the DPH adopted a set of strict regulations governing the siting and operation of RMDs and the methods by which the drug can be prescribed to patients. This extensive set of regulations is summarized below.

Summary of the DPH regulations:

- There will be no more than 35 RMDs in the state and no more than 5 per county.
- Physicians who wish to prescribe medical marijuana to their patients must register with DPH; physicians must have an established relationship with their patient to prescribe marijuana.
- Patients and personal caregivers must also register with DPH.
- Organizations looking to run an RMD must be non-profit, have a minimum of \$500,000 under their control, and be applying to run no more than three RMDs (each application beyond the first RMD must be associated with \$400,000 more capital).
- RMDs must cultivate their own product although this can be done at an alternate site under their control with all transportation to the actual dispensary handled by the organization under strict transportation regulations.
- Independent laboratory testing must be performed on the marijuana (this requirement differs from regulations in other states).
- Security requirements are extensive including alarm systems, security cameras with retained secured videos for a minimum of 24 hours, locked storage area, marked limited access areas, no plantings outside the facility where someone could hide, outside lighting, and written emergency procedures.
- Waste disposal procedures are specified in the regulations.

- Logos and signs cannot include any reference to medical marijuana or any images of the product or symbols of associated paraphernalia and must conform to local sign ordinances.
- Siting of RMDs must conform to local requirements and cannot be within 500 ft of a school, daycare center or facility where children usually congregate.
- DPH can conduct unannounced inspections of the RMDs and any transport vehicles.
- A license is issued for the period of one year.
- DPH can grant a hardship waiver to a patient for cultivation of medical marijuana for personal use (only mechanism currently available to patients pending licensing and opening of RMDs).

The regulations serve two primary purposes, 1) to strictly control the distribution of the drug so that only those with a legitimate medical reason will have access, and 2) to avoid the promotion of the use of marijuana outside of medicinal purposes. Towards those ends, the regulations focus on security of the premises and operations, the prescription process, and the location and nature of the growing areas and dispensaries. The state regulations are both comprehensive and carefully considered and state regulators clearly drew lessons from the experiences of other states where medical marijuana is permitted.

Local Medical Marijuana Working Group

Even with the detail of the state regulations, the responsibility remains for each municipality to identify local regulations governing where RMDs may be located within the community through zoning (The Attorney General has determined that the use may not be banned entirely). An initial working group was formed to begin to discuss the issue; membership included Candace Havens, Director of Planning and Development, Dori Zaleznik, Commissioner of Health & Human Services, Marie Lawlor, Assistant City Solicitor, Howard Mintz, Chief of Police, and Aldermen Greg Schwartz and Brian Yates. The working group met twice and identified a range of options, identified below. The working group has not yet reached a final recommendation relative to an ordinance amendment but is far enough along in its understanding of the issues presented by medical marijuana dispensaries that, coupled with the state permitting timeline shown below, it is important to begin getting feedback now from the ZAP committee on several questions outlined in the Next Steps section below.

State Permitting Timeline

- The application process for an RMD is divided into two phases: Phase I applications were due on August 22. Forty-seven organizations applied for Middlesex County – the largest number of overall applications.
- DPH will review these applications for compliance with the resource requirements (available money) of the organization and absence of any convictions of any of the individuals involved for any illegal activities.
- Decisions on Phase 1 applications (per criteria above) expected in late September.
- After receipt of Phase 1 approval, applicants are required to notify the chief administrative officer and the chief of police of any community in which they are looking to site an RMD of their intent to submit an application for Phase 2. (Newton has currently received 9 or 10 inquiries from different organizations looking to come to Newton during the Phase 1 process).
- Phase 2 applications are due within 45 days of receiving Phase 1 approval. Phase 2 applications need to include a site (with a title, option to purchase, signed lease, or binding permission to use the premises).

- Phase 2 applications also include a detailed floor plan, a detailed business plan, an operating plan, summary of operating policies and procedures, detailed security plan, analysis of the projected patient population and projected need within a defined service area, training procedures, experience of the organization, patient education materials, procedures for giving marijuana to registered patients who qualify for financial hardship, etc.
- In considering Phase 2 applications, DPH may conduct site visits. The regulations state that they will take into consideration geographical distribution (convenience for patients and avoidance of clustering in one location) and local support for the application.
- The newspapers have reported that DPH will be making their Phase 2 decisions before the end of the calendar year with an expectation that RMDs will take at least an additional several months before they are ready to open.

If no action were taken...

The working group is presenting two possible courses of immediate action for ZAP, 1) to provide direction on locational parameters to govern RMDs in Newton or 2) to act on a moratorium to allow for more time. As an undefined use in the Newton zoning ordinance, there are limited controls available in the existing ordinance. In this context, an applicant with a proposed site for a registered marijuana dispensary would, like any other undefined use, be asked to provide a detailed description of the use which would be used as the basis for a determination by the Chief Zoning Code Official and the Commissioner of Inspectional Services with regards to what existing, defined use in the ordinance, the proposed use would be most similar to. The registered medical marijuana dispensary would then be regulated as that use. A registered marijuana dispensary is a use that would be hard to equate to an existing use in the ordinance given its highly specified and regulated product and necessary security attributes so staff cannot predict with great certainty what existing defined use it would be equated to, but staff would not be able to disallow the use based on it not being defined in the ordinance – it would have to be allowed somewhere.

PROPOSED AMENDMENT

In discussion of the appropriate regulations for the location of registered marijuana dispensaries, the working group considered the zoning districts in which the use might be allowed and the creation of buffer areas in which the use would be prohibited around a range of specific land uses. The attached map shows these potential districts and buffers. The districts the working group considered included all business and manufacturing districts as well as the mixed-use 1 and 2 districts on Needham Street. Buffers of 500-feet and 1000-feet were considered for residential zoning districts and houses of worship. The state regulations have already established a 500-foot buffer on day-care centers and schools; the working group considered increasing that buffer to 1000-feet.

As can be seen on the map, as a largely residential community, there are virtually no locations within the City that are not in proximity to a residential area. Those areas more than 1000-feet from a residential district are outside of the band of light, nearly transparent purple while those more than 500-feet from residential districts are outside of the tan area (a large map will be available at the meeting and we will walk through the color representations in greater detail at that time). For each of the other land uses, a 500 and 1000-foot buffer is shown in the tan and yellow bull's-eyes around each use. The historical development pattern of the City has ensured that virtually the entirety of every

village area is within 1000-feet of a house of worship eliminating many of the City's business districts if that option were to be chosen.

In addition to discussion of regulations for registered marijuana dispensaries, the working group also discussed and drafted a zoning ordinance amendment reflective of a moratorium on this land use (Attachment 2). Many other communities across the state have opted for a moratorium as they consider the implications of this land use, especially given the limited staff resources available in many of these communities.

NEXT STEPS

The working group will meet one more time to finalize a recommended ordinance amendment to regulate the location of RMDs in Newton. There are a number of outstanding questions to consider and the working group would welcome feedback from ZAP.

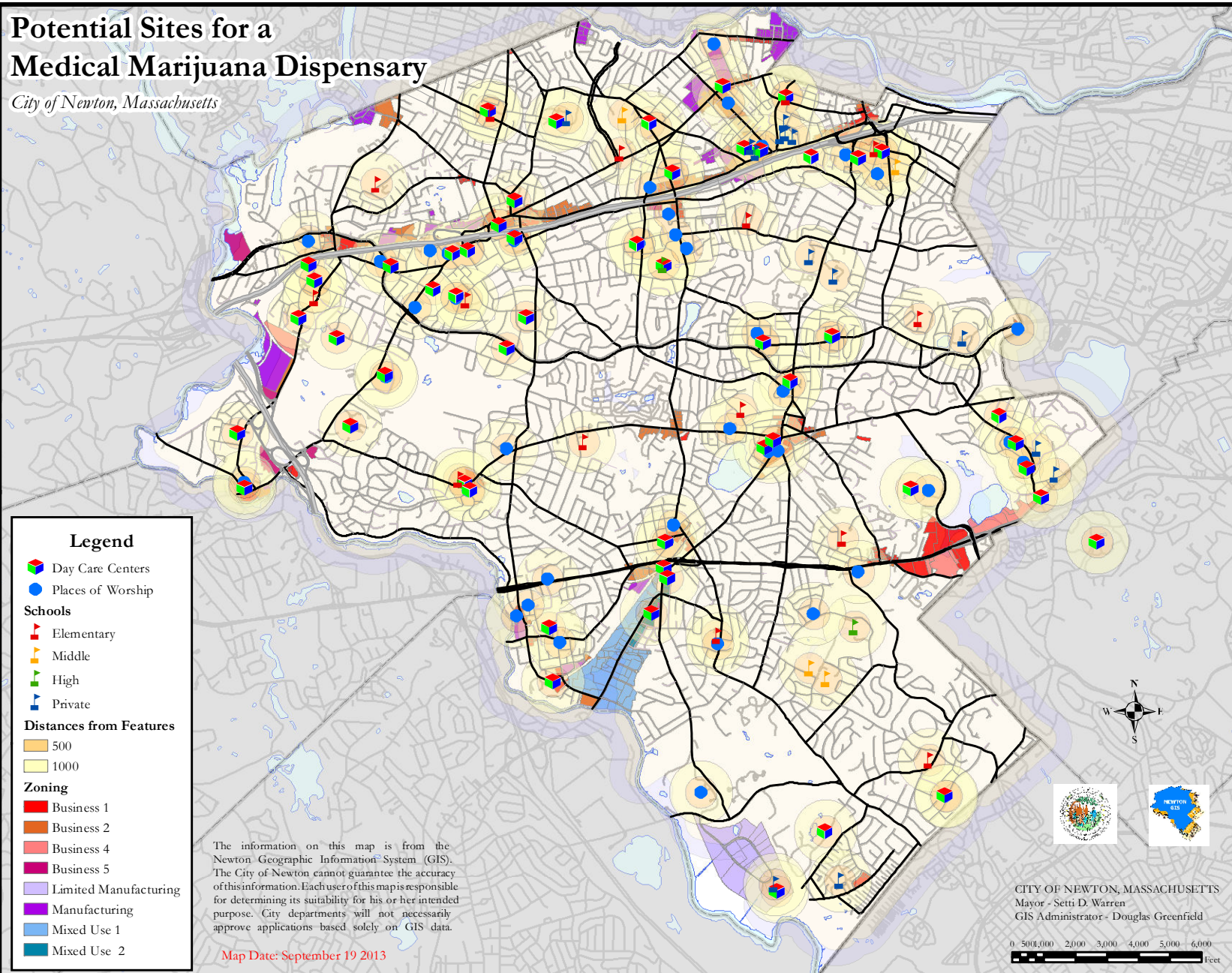
1. Given the timelines of State action and the process necessary to amend the zoning ordinance, it is likely that ZAP will need to advance the six-month moratorium proposal to a public hearing now and then replace this provision with a final zoning amendment as soon as that amendment can be prepared.
2. What comments or concerns are raised relative to the identified zoning districts and buffer areas?
3. Staff welcomes any other questions or concerns for which research and analysis can be provided to aide ZAP in its decision-making process.

ATTACHMENTS:

Attachment A	Location analysis map for Medical Marijuana Dispensaries
Attachment B	Ordinance Language for a Six-Month Moratorium on Registered Marijuana Dispensaries

Potential Sites for a Medical Marijuana Dispensary

City of Newton, Massachusetts



MEDICAL MARIJUANA TREATMENT CENTERS

DRAFT of PROPOSED TEMPORARY MORATORIUM

If the Board of Alderman wishes additional time to consider zoning amendments for placement of Medical Marijuana Treatment Centers, the Medical Marijuana Task Force recommends no more than a six month moratorium, and proposes the following language:

1. Add the following definition to *Section 30-1 Definitions*:

Medical marijuana treatment center (registered marijuana dispensary): A not-for-profit entity which is licensed and registered by the Massachusetts Department of Public Health under 105 CMR 725.100, also known under said regulations as a registered marijuana dispensary (“RMD”), that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana-infused products, tinctures, aerosols, oils, or ointments) transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to licensed patients or personal caregivers.

2. Add the following language to *Section 30-5 Allowed uses in all districts; special permits in all districts; prohibitions in all districts*:

(d) *Medical marijuana treatment center temporary moratorium.* In order to provide the City with adequate time to complete a planning process to address the potential impacts of medical marijuana treatment centers and their related uses on the city, and to study and consider adoption of zoning amendments to regulate what districts and under what conditions medical marijuana treatment centers will be allowed, no land, buildings or structures in any district shall be used for a medical marijuana treatment center. This moratorium shall expire on March 1, 2014, unless repealed earlier by the board of aldermen.